IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.239 of 2004
MADHAV KUMAR SINGH @ MADHAV SINGH & ANR.
Versus
KAMLA KANT JHA & ORS
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11. 8/7/2008 Heard the learned counsel for the appellants and the learned counsel for the respondent no. 3, the New India Assurance Company Ltd. Nobody appears for other respondents in spite of the validly served notice on them.

The Insurance Company has also filed show cause/rejoinder which is on record. The impugned order is dated 12.4.2004 whereby and whereunder Misc. petition No. 8 of 2003 arising out of the claim case No. 40 of 1992 filed under order 9 Rule 9 C.P.C. in respect of restoration of the aforesaid claim case by setting aside the order of dismissal dated 7.8.2003, has been dismissed by learned 3rd. Additional District Judge-Cum- Accident Claim Tribunal, Bhagalpur.

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It has been submitted that the appellant's claim case No. 40 of 1992 was dismissed on 7.8.2003 for default as no pairvi was made on behalf of the appellant nor anybody did respond to the cause. The appellant was given an impression that his claim case bearing No. 40 of 1992 has been transmitted to the Lok Adalat and as such, he was prevented from taking any effective steps for proceeding ahead with the matter in the Tribunal. His subsequent petition filed under Order 9 Rule 9 of the C.P.C. for restoration of the claim case was also dismissed without appraisal of fact and circumstance, under which the

claimant/appellant was prevented from pursuing the matter in right perspective.

On the other hand, the learned counsel for the respondent No. 3, the New India Assurance Company Ltd., by referring the impugned order itself coupled with the order dated 7.8.2003 has submitted that conduct of the petitioners/appellant is manifest wherefrom anyone could infer that in spite of pendency of the claim case for about 11 years, not a single witness on behalf of the claimant was ever produced. He has also submitted that there was no occasion in the given situation for filing any attendance of witness in the Tribunal by the claimant/appellants in case they were really under the impression that claim case has been transmitted in the Lok Adalat.

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Having considered the facts and circumstance, averments made in the respective petitions as also other connected materials on the record it would be desirable that an opportunity to contest the matter on merit should be given to the petitioner/appellants so that their claim case could be decided by the court below but for that the Insurance Company should also not be harassed for bearing them any interest for the continuance of the proceeding right from 1992, for no fault of their.

After hearing learned counsel of both sides, the period of 12 years should be excluded to be counted for the purpose of

paying any interest to the Claimant from the date of appearance of the Insurance Company in the court below in case any award thereof is made against them by the Insurance Company on final conclusion of the proceeding.

The petition after setting aside the impugned order is hereby allowed.

S.Ali **(Subash Chandra Jha, J.)**

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